



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,547	07/25/2003	David L. Bauer	5053.00009	3536

37526 7590 04/13/2006

RADER, FISHMAN & GRAUER PLLC
10653 SOUTH RIVER FRONT PARKWAY
SUITE 150
SOUTH JORDAN, UT 84095

EXAMINER

PATEL, JAGDISH

ART UNIT	PAPER NUMBER
----------	--------------

3624

DATE MAILED: 04/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/627,547	Applicant(s) BAUER ET AL.	
	Examiner JAGDISH PATEL	Art Unit 3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-15,17-30 and 32-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-15,17-30 and 32-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This communication is in response to amendment filed 1/30/06.


Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/30/06 has been entered.

Response to Amendment

3. Claims 1, 3-15, 17-30 and 32-54 are currently pending of which claims 1, 15, 20, 27-29 and 33 have been amended and claims 34-54 have been newly added.

Response to Arguments

4. Applicant's arguments, with respect to claim rejections under 35 USC 101, 112 and prior art rejections under 35 USC 102 and 103 indicated in prior office action have been fully considered and are persuasive. Accordingly, and further in view of the amendment the aforementioned rejections have been withdrawn.
- 

Claim Rejections - 35 USC § 112

5. Claims 1 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites “one or more servers configured to provide an auction service” which renders the claim indefinite because one cannot ascertain the scope of the claim as for the constituent part of the “online auction server system”.

Claim 1 recites limitation “a final successful bid being at least equal to the final preliminary bid”. Since the claim does not define the final successful bid in context of the preliminary bidding component, one cannot evaluate the final preliminary bid in relation to the final successful bid.

Claim 1 does not clearly correlate the dynamic real-time component with the preliminary bidding component as explained below.

- “continuing until a higher bid is no longer received” does not specify what measure is used to determine the higher bid. Is it higher than the final preliminary bid or the final successful bid or highest bid received in the dynamic auction component ?
- since the preliminary bidding component offers a plurality of items and each for a respective pre-established duration of time should there not be a plurality of successful bids?

The following comment applies to “whereby” clause of claim 1.

Art Unit: 3624

The “whereby” clause only recites intended outcome the process performed by the dynamic real-time component. It does not add any patentable limitation to the system itself and therefore is not accorded any patentable weight.

A “whereby” clause that merely states the result of the limitations in the claim adds nothing to the patentability or substance of the claim. See *Texas Instruments Inc. v. International Trade Commission*, 26 USPQ2d 1018 (CAFC 1993).

The dynamic real-time auction component only perform auction of the plurality of the items from the preliminary auction component.

It is clear from the claim as recited that both component duplicates the process of offering the same plurality of items for auction only at different times (or in succession). The claim is defective because it does not provide any connection between the two auction components for example, defining the starting bid for each of the plurality item in the dynamic real-time auction component based upon the respective final preliminary bid from the preliminary bidding component.

Appropriate correction(s) is required.

Applicant is requested to review independent method claims 15, 29 for corresponding deficiencies and make appropriate corrections where applicable.

Applicant is requested to review independent system claims 33 and 54 for corresponding deficiencies and make appropriate corrections where applicable.

Allowable Subject Matter

6. Claims 1, 3-15, 17-30 and 32-54 are allowed over prior art subject to resolution of the foregoing 112(second) issues.

Conclusion

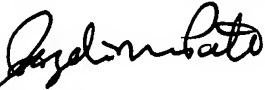
Art Unit: 3624

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAGDISH PATEL whose telephone number is (571) 272-6748. The examiner can normally be reached on 800AM-600PM M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is 517-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jagdish N. Patel

(Primary Examiner, AU 3624)

4/11/06